

1 The Honorable John C. Coughenour
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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 RANDELL B. NEALY,

10 Plaintiff,

11 v.

12 UNITED STATES OF AMERICA,

13 Defendant.

14 CASE NO. 2:22-cv-00136-JCC

15 UNITED STATES' ANSWER TO
COMPLAINT

16 Defendant United States of America, by and through its attorneys, Nicholas W. Brown,
17 United States Attorney for the Western District of Washington, and Whitney Passmore, Assistant
18 United States Attorney, hereby answers the Complaint filed by Randell B. Nealy (hereafter,
19 "Plaintiff"), as follows:

20 **I. PARTIES**

21 1A. The United States admits that Randell B. Nealy is the plaintiff in this action.

22 1B. The United States admits that the United States is the defendant in this action. The
23 United States denies that the VA Hospital Seattle is a proper defendant in this action, and the Court
24 has substituted the United States in place of the VA Hospital Seattle. *See* Dkt. 10.

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UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

II. JURISDICTION AND VENUE

2. The United States admits that to the extent Plaintiff alleges an action under the Federal Tort Claims Act, federal question jurisdiction applies.

2A. The United States admits that Plaintiff has alleged an action under 28 U.S.C. § 1346(b). The United States denies that 28 U.S.C. § 2672 and 51 U.S.C. § 20137 apply to this action.

2B. The United States denies that diversity jurisdiction applies to this action. The United States admits that Randell B. Nealy is the plaintiff in this action. The United States further denies liability in this action and denies that Plaintiff may be entitled to any amount of money.

III. STATEMENT OF CLAIM

3. The United States denies all allegations set out in Plaintiff's Statement of Claim.

IV. RELIEF

4. The United States denies that Plaintiff is entitled to damages in this case.

The remainder of Plaintiff's Complaint contains attachments to which no response is required. To the extent a response is required, the United States states that medical records speak for themselves and denies any allegations that are inconsistent with the medical records. The United States lacks sufficient information regarding the information included in the two attached letters, and therefore denies any allegations based on or included in these letters. The United States specifically denies the allegations contained in the attached Statement of Merit.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted against Defendant.

2. Defendant complied with any duties of care it may have owed Plaintiff under Washington state law.

1 3. Plaintiff's recovery is limited to the damages recoverable under the FTCA.

2 4. Plaintiff's recovery in this case is barred by the Washington law on comparative
3 negligence.

4 5. The damages alleged in the Complaint were not proximately caused by the
5 negligent or wrongful acts of an agent or employee of the United States.

6 6. Pursuant to 28 U.S.C. § 2678, Plaintiff is not entitled to a separate award of
7 attorney's fees.

8 7. To the extent Plaintiff is entitled to recover damages from the United States in this
9 action, which Defendant denies Plaintiff is entitled to, the United States is entitled to a credit or
10 set-off for any past or future benefits paid to or on behalf of or received by the Plaintiff, to the
11 extent allowed under federal and state common law and statutory law.

12 8. Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount
13 for pre-judgment interest against the United States.

14 9. To the extent Plaintiff is entitled to recover future economic damages from the
15 United States in this action, which Defendant denies Plaintiff is entitled to, the United States is
16 entitled to a judgment for periodic payment of those damages under Wash. Rev. Code § 4.56.260.

17 10. Defendant asserts that it has, or may have, additional affirmative defenses that are
18 not known to Defendant at this time but may be ascertained through discovery. Defendant
19 specifically preserves these and other affirmative defenses as they are ascertained through
20 discovery.

21 WHEREFORE, the United States respectfully requests that the Court dismiss all claims in
22 Plaintiff's Complaint and grant it such other relief as may be just and appropriate.

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1 DATED this 31st day of May, 2022.

2 Respectfully submitted,

3 NICHOLAS W. BROWN
4 United States Attorney

5 *s/ Whitney Passmore*
6 WHITNEY PASSMORE, FL No. 91922
7 Assistant United States Attorney
8 United States Attorney's Office
9 700 Stewart Street, Suite 5220
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Email: whitney.passmore@usdoj.gov

10 *Attorneys for the United States of America*

CERTIFICATION OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers;

I further certify that on today's date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

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I further certify that on today's date, I arranged for service of the foregoing on *Pro Se* Plaintiff, via FedEx Priority Overnight, addressed as follows:

Randell B. Nealy
7515 – 24th Ave SW, Unit 1
Seattle, WA 98106

DATED this 31st day of May, 2022.

s/ Caitlin Froelich
CAITLIN FROELICH, Paralegal Specialist
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